

**BOARD OF ZONING APPEALS
MINUTES
FEBRUARY 24, 2004**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on February 24, 2004, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES RUANE, JOHN ROGERS, BICKLEY FOSTER, JAMES SKELTON, ERMA MARKHAM.

The following Board members were absent:

DWIGHT GREENLEE, AND RANDY PHILLIPS.

SHARON DICKGRAFE – Law Department present.

HERB SHANER - Office of Central Inspection present.

The following Planning Department staff members were present:

DALE MILLER Secretary.

SCOTT KNEBEL Assistant Secretary.

ROSE SIMMERING, Recording Secretary.

RUANE Item #1, January 27, 2004, BZA meeting minutes.

FOSTER moves, MARKHAM seconds to approve January 27, 2004, BZA meeting minutes.

Motion carries 5-0.

RUANE Item 2, Case No, BZA2004-01, Request a Variance to allow parking within 5-ft of property lines on property zoned “SF-5” Single-family Residential, generally located on the northeast corner of 51st Street South and Kansas. Applicant USD 259, Agent Joe Hoover.

KNEBEL, Planning staff Presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

CASE NUMBER:	BZA2004-00001
OWNER/APPLICANT:	USD 259 c/o Joe Hoover
REQUEST:	Variance to Section IV-A.6.a. of the Unified Zoning Code to permit parking within the street side setbacks on residentially-zoned property
CURRENT ZONING:	“SF-5” Single Family
SITE SIZE:	5.87 Acres
LOCATION:	North of 51 st Street South and east of Hydraulic (5148 S. Kansas)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting a variance to Section IV-A.6.a. of the Unified Zoning Code to permit parking within the street side setbacks on residentially-zoned property The subject

property is located north of 51st Street South and east of Hydraulic at 5148 S. Kansas. The subject property is zoned “SF-5” Single Family and is developed with White Elementary School.

The applicant proposes to construct an addition to White Elementary School as illustrated on the attached site plan. Since the value of the proposed addition exceeds 50 percent of the appraised value of the existing school, Section VII-E of the Unified Zoning Code requires the subject property to comply with all current requirements of the Unified Zoning Code, including meeting the on-site parking requirements. In order to meet the on-site parking requirements, the applicant proposes to construct two parking lots, one along 51st Street South and the other along Sunrise. As stated in the attached letter, the applicant selected these locations for the parking lots to preserve as much of the property as possible for a playground. The proposed parking lots encroach into the required 15-foot street side setback for the “SF-5” district by 10 feet, which may be permitted only by a variance.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5”	Single family
SOUTH	“SF-5”	Single family
EAST	“SF-5”	Single family
WEST	“GC”	Mini-storage

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the subject property is developed with an elementary school on a tract that is less than one-third the size of a typical elementary school property; therefore, development of the property within all setback requirements is not possible while preserving sufficient open space for a playground.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the only residential uses adjacent to the parking lot are located across the street; therefore, the subject property will not create any of the negative impacts that occur when a parking lot immediately adjoins residential uses.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Code will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the parking lot to be developed in accordance with the zoning regulations will entail eliminating the playground on the school property.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as sufficient separation between the parking lots and the right-of-way will exist so that no detrimental impacts to public health, safety, or welfare should occur.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Code inasmuch as the intent of Section IV-A.6.a. of the Unified Zoning Code is to prevent parking lots from encroaching in front of the building wall line along a residential street and causing detrimental impacts on the neighborhood by interrupting the continuous landscaped street yard. The subject property is located across the street from all residences; therefore, it will not violate the intent of Section IV-A.6.a. of the Unified Zoning Code.

RECOMMENDATION: It is staff’s opinion that the variance requested is appropriate. Should the Board determine that the five conditions necessary for granting the variance exist, then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions:

1. The parking lots shall be permitted to encroach into to the street side setbacks along 51st Street South and Sunrise but shall not be located closer than five (5) feet from the property line.
2. The parking lots shall be paved and marked in general conformance with the approved site plan.
3. The parking lots shall be developed in general conformance with the landscape ordinance.
4. The applicant shall obtain all necessary permits, and the improvements to the parking lots shall be completed within one year of the granting of the variance, unless such time period is extended by the Board.
5. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

FOSTER Scott, what kind of screening will we have or can anticipate on this?

KNEBEL What the landscape ordinance would require under Condition #3, is two things. One, is parking lot screening which is a row of shrubs that are to reach a mature height of 3 feet within 3 years of planting and maintained at the height in order to screen the vehicles from the street right-of-way. Two, a landscape street yard which requires certain square footage based on the depth of the lot of landscape area including one tree for every 500 square feet of required landscaped area. Those trees would need to be planted between the street right-of-way and the building wall line. That would be on all four streets for this property.

RUANE Scott, would you repeat the screening part of that.

KNEBEL The parking lot screening is a row of shrubbery that grows up about to the height of the car hood about 3 feet high and is primarily intended to block headlights at night and also provide some visual screening of the vehicles themselves.

RUANE How far apart are the shrubs planted?

KNEBEL It will be a solid hedge of shrubs that are planted along the property line and along the entire distance of the parking area except at drive entrances.

FOSTER What is directly across from this parking lot?

KNEBEL Single-family residences, on both sides, the north and south.

FOSTER Can there be more landscaping that will gain height or higher? The 3-feet will not do much for them.

KNEBEL No, we do not much experience in requiring that for screening of parking areas even on commercial property.

SKELTON We are examining the impact to the adjacent properties and whether the Code is adequate to met those potential impacts?

FOSTER Yes, and in addition to that, we have big buildings here, right up to the setback line.

DICKGRAFE No, this is a parking lot.

KNEBEL The building actually respects all of the required building setback lines and exceeds them significantly.

FOSTER How far back? The buildings are right back of the parking where the sidewalk is.

KNEBEL But as far as encroaching into the setbacks the buildings do not.

FOSTER I would think some additional screening might be desirable here.

MARKHAM My comment is involved in the screening that Mr. Foster is concerned about. To me that can be a positive and a negative because in a parking lot that is totally screened there is always the threat of vandalism of property by certain people. It is well that the neighbors can see the beautiful trees or shrubbery, but it is good that they can see what is happening over there. Too much screening can be bad.

FOSTER I think Mrs. Markham has a good point, and my thought was not to change the 3-foot height but maybe to add some trees that would tend to soften the visual impact of the parking lot. What is the distance of the planting area?

KNEBEL I am not finding the dimension for the width. It looks like 13 parking spaces and they are probably 9-10 feet wide.

FOSTER Three or four trees?

KNEBEL It depends on the type of tree as to the ideal spacing.

FOSTER You could probably get a few more trees in there to add more buffering to the neighborhood which is across the street.

RUANE Bickley, you are suggesting is trees in addition to the 3-ft hedge?

FOSTER Right.

DICKGRAFE If you put trees in that area, it appears that on both sides you have ingress and egress, and people will not be able to see. It will obstruct views.

FOSTER You wouldn't be putting it on the corner. You have 120-130 feet there.

MARKHAM Does the barrier that is in the condition, does it specify what kind of trees and shrubbery is to be added?

KNEBEL Yes, the landscape ordinance requires trees and shrubs. The trees would be required in the landscape street yard requirement, and the shrubs are required as the parking lot screening. It does not require that the trees be planted between the parking area and the street right-of-way. It requires that they be planted between the building wall line and the street right-of-way so they could be planted in other locations that would provide a landscape yard between the school and the street but not necessarily between the parking area and the street, except for the parking lot screening.

RUANE Scott, as a planner do you feel the requirement of planting additional trees would create any safety of visibility issues with required to ingress or egress?

KNEBEL I don't, because the landscape ordinance would prevent them from planting trees inside the site triangle.

MARKHAM MOVES THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT THE SECRETARY'S REPORT.

MOTION dies lack of second.

FOSTER MOVES ROGERS SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT THE SECRETARY'S REPORT EXCEPT THAT ITEMS #3 BE AMENDED TO READ:

- 3. The parking lots shall be developed in general conformance with the landscape ordinance plus two deciduous trees on the north and three deciduous trees on the south in the 5-foot deep area between the parking area and the street but not within the site triangle.**

RUANE This is in addition to the 3-ft shrubbery wall at those same locations?

FOSTER Yes.

MOTION carries 4-1 (Markham opposed). The Board adopts the following resolution:

BZA RESOLUTION NO. 2004-00001

WHEREAS, Unified School District 259 (Owner); Joe Hoover (Agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to Section IV-A.6.a of the Unified Zoning Code to permit parking within the street side setbacks on property zoned "SF-5" Single-family Residential legally described as follows:

BEG 325 FT E SW CORN NW 1/4 N 486.26 FT E 627.07 FT S 486.26 FT W TO BEG EXC S 30 FT FOR RD SEC 22-28-1E. Generally located north of 51st Street South and east of Hydraulic (5148 S. Kansas).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of February 24, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the subject property is

developed with an elementary school on a tract that is less than one-third the size of a typical elementary school property; therefore, development of the property within all setback requirements is not possible while preserving sufficient open space for a playground.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the only residential uses adjacent to the parking lot are located across the street; therefore, the subject property will not create any of the negative impacts that occur when a parking lot immediately adjoins residential uses.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Code will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the parking lot to be developed in accordance with the zoning regulations will entail eliminating the playground on the school property.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as sufficient separation between the parking lots and the right-of-way will exist so that no detrimental impacts to public health, safety, or welfare should occur.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Code inasmuch the intent of Section IV-A.6.a. of the Unified Zoning Code is to prevent parking lots from encroaching in front of the building wall line along a residential street and causing detrimental impacts on the neighborhood by interrupting the continuous landscaped street yard. The subject property is located across the street from all residences; therefore, it will not violate the intent of Section IV-A.6.a. of the Unified Zoning Code.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance be granted to Section IV-A.6.a of the Unified Zoning Code to permit parking within the street side setbacks on property zoned “SF-5” Single-family Residential legally described as follows:

BEG 325 FT E SW CORN NW 1/4 N 486.26 FT E 627.07 FT S 486.26 FT W TO BEG EXC S 30 FT FOR RD SEC 22-28-1E. Generally located north of 51st Street South and east of Hydraulic (5148 S. Kansas).

The variance is hereby GRANTED, subject to the following conditions:

1. The parking lots shall be permitted to encroach into to the street side setbacks along 51st Street South and Sunrise but shall not be located closer than five (5) feet from the property line.
2. The parking lots shall be paved and marked in general conformance with the approved site plan.

3. The parking lots shall be developed in general conformance with the landscape ordinance plus two deciduous trees on the north and three deciduous trees on the south in the 5-foot deep area between the parking area and the street but not within the site triangle.
4. The applicant shall obtain all necessary permits, and the improvements to the parking lots shall be completed within one year of the granting of the variance, unless such time period is extended by the Board.
5. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 24th DAY of FEBRUARY, 2004.

RUANE Item 3, Case No, BZA2004-02, Request a Variance to allow parking within 5-ft of property along Cresthill for Price Harris Elementary School, on property zoned “SF-5” Single-family Residential, generally located at the southeast corner of 9th Street North and Armour, Applicant USD 259, Agent Joe Hoover.

KNEBEL, Planning staff Presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

CASE NUMBER: BZA2004-00002
 OWNER/APPLICANT: USD 259 c/o Joe Hoover
 REQUEST: Variance to Section IV-A.6.a. of the Unified Zoning Code to permit parking within the front setback on residentially-zoned property
 CURRENT ZONING: “SF-5” Single Family
 SITE SIZE: 10.7 Acres
 LOCATION: Southeast corner of 9th Street North and Armour (706 N. Armour)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting a variance to Section IV-A.6.a. of the Unified Zoning Code to permit parking within the front setback on residentially-zoned property. The subject property is located at the southeast corner of 9th Street North and Armour at 706 N. Armour. The subject property is zoned “SF-5” Single Family and is developed with Price Harris Elementary School.

The applicant proposes to construct an addition to Price Harris Elementary School as illustrated on the attached site plan. Since the value of the proposed addition exceeds 50 percent of the appraised value of the existing school, Section VII-E of the Unified Zoning Code requires the subject property to comply with all current requirements of the Unified Zoning Code, including meeting the on-site parking requirements. In order to meet the on-site parking requirements, the applicant proposes to construct a parking lot along Cresthill. As stated in the attached letter, the applicant selected this location for the parking lot to preserve as much of the property as possible for a playground. A portion of the proposed parking lot encroaches into the required 25-foot front side setback for the “SF-5” district by as much as 20 feet, which may be permitted only by a variance.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5”	Church
SOUTH	“SF-5”	Single family
EAST	“SF-5”	Church
WEST	“SF-5”	Single family

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the subject property is developed with an elementary school on a tract that is about one-half the size of a typical elementary school property; therefore, development of the property within all setback requirements is not possible while preserving sufficient open space for a playground.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the only residential uses adjacent to the parking lot are located across the street; therefore, the subject property will not create any of the negative impacts that occur when a parking lot immediately adjoins residential uses.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Code will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the parking lot to be developed in accordance with the zoning regulations will entail eliminating needed playground area on the school property.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as sufficient separation between the parking lot and the sidewalk will exist so that no detrimental impacts to public health, safety, or welfare should occur.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Code inasmuch the intent of Section IV-A.6.a. of the Unified Zoning Code is to prevent parking lots from encroaching in front of the building wall line along a residential street and causing detrimental impacts on the neighborhood by interrupting the continuous landscaped street yard. The subject property is located across the street from all residences; therefore, it will not violate the intent of Section IV-A.6.a. of the Unified Zoning Code.

RECOMMENDATION: It is staff's opinion that the variance requested is appropriate. Should the Board determine that the five conditions necessary for granting the variance exist, then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions:

1. The parking lot shall be permitted to encroach into to the front setback along Cresthill but shall not be located closer than five (5) feet from the property line.
2. The parking lot shall be paved and marked in general conformance with the approved site plan.
3. The parking lot shall be developed in general conformance with the landscape ordinance.
4. The applicant shall obtain all necessary permits, and the improvements to the parking lot shall be completed within one year of the granting of the variance, unless such time period is extended by the Board.
5. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

RUANE Go back to the slide that shows the red line on the site location. To the east that shows the creek bed are those pine trees?

KNEBEL Of some variety yes.

RUANE Will those be disturbed in anyway?

KNEBEL Not to my knowledge.

JOE HOOVER They will not be disturbed.

RUANE Will there be any other presently existing landscape that would be eliminated through the expansion?

KNEBEL I think there is a tree or two already removed.

JILL ALEXANDER, 7237 Cresthill Court, Wichita, KS 67206 There was two or three trees that have been removed already.

RUANE Scott what it is your feeling with regard to the proposal by the Cresthill Court neighbors?

KNEBEL Certainly something that is feasible that would provide a screening at a higher level from say somebody standing or looking out of their house window that isn't provided by shrubs and that is the intent of the landscape street yard too. Although it is really intended to provide for screening of more than just the parking area, but certainly providing trees between the parking area and the property line is quite common.

RUANE What would you think instead of Bradford Pears, Canaertii, Pines or something that would keep its leaves all year around.

KNEBEL As far as screening off the parking area entirely from view from the street I don't know if that would be wise choice.

RUANE What do you think would be the best choice of landscaping material?

KNEBEL I think the shrubs and shade trees that are required by the landscape ordinance seem to work pretty well in every circumstance that I have seen them applied in.

MARKHAM What is the negative impact on property value due to the related increased traffic flow? What is going to cause an increase traffic flow?

KNEBEL I am not aware of how the traffic is going to increase. This is more of an expansion and replacement of temporary structures.

RUANE What is happening here is the combination of two schools. So there will be twice the traffic and students. The Price School will be closed entirely. This school which used to have three other grades will now be serving the place and be the facility of what used to be two separate schools, so roughly double the traffic than from before.

JOE HOOVER Probably not quite that many but there will be certainly more. It will be a doubling for consolidation purposes.

MARKHAM It will be the same as what happened at White Elementary? I thought this was just an improvement of a parking lot due to the bond money issue.

JOE HOOVER On both sites we are combining schools. Probably not double the traffic because of multiple children per family but certainly more. However, the parking lot will have the bus drive-thru, and if it is used in that manner, they could drop children off there as before there was a gravel lot there before and should improve the traffic flow sufficiently. It is true if you screen parking too much you will have more vandalism in the school and to the cars in the parking lot, that is why we like going 3-ft high with shrubs to keep the lights out of the neighbors when there are night meetings there. We would

be agreeable to what we too have asked us to do at White, which is to put a more durable pear and configure those so we can make them look nice in the neighborhood.

At White Elementary it might be a little bit more difficult since we are only talking 5-ft, and there is a sidewalk. There I am a little concerned about when the trees are mature and keeping them trimmed up high enough where people can walk there.

RUANE Have you seen the site plan submitted by the neighbors?

HOOVER Yes, they did contact me in advance.

RUANE What is the length of the landscape barrier?

HOOVER Probably under 200-feet.

FOSTER What is at the very end where it narrows there?

HOOVER Those are handicapped parking spaces there.

FOSTER On the other end is that just a small grassed area?

HOOVER I am not sure if that is grass or concrete or asphalt as a little separation island for safety. It says stripping. I guess that is grade level which is striped.

FOSTER Are looking at deciduous or coniferous trees here?

HOOVER Probably deciduous. We just prefer not to have anything that is blocking, anything higher than 3-ft, so that we can trim and look under them for kids safety. Also, when you are considering a parking lot like this, if you screen too high, kids can run out behind and dart into traffic real quick, and anybody coming in, that presents a real safety hazard for that child.

RUANE I think there needs to be a greater amount of landscaping here. I think the needed and necessary driveway to provide egress and ingress to the school is going to be located directly opposite of egress and ingress to Cresthill Court is one of the things that makes this circumstance unique and satisfy the criteria for a variance and for an exception. My thought is that Bradford Pears are too tall and leaf out for too short a period of the year to achieve the objective, and that my not having enough knowledge of landscaping, I was suggesting Pine Tree or a Canaertii or something like that which will ultimately reach an 8-ft height and start out not shorter than 5 feet and have them planted close enough together that they would make a full screen to run the length of this parking lot as it runs close to Cresthill Street, but I don't want to do anything that is not in the best interest of the safety of the school children.

SKELTON I think the School District should go above and beyond for the landscaping requirements and meet the neighborhood's request.

JILL ALEXANDER, 7237 Cresthill Court, Wichita, KS 67206 Our concern is safety. We would love to have complete screening, but then we thought maybe some sort of pear tree. They are about as dense as a deciduous tree as possible. That would be fine. If we could keep the trees on for 12 months of the year that would be good. Right now what is a playground space and empty space will soon be filled with 55 cars, and at the most, there are at least 20 cars there, and more up by the corner, so it will be a change visually for those of us who live in the neighborhood.

RUANE Have you learned much about trees to know what would best achieve the best screening?

ALEXANDER Part of it is based on observation. There is usually pear tree that gets very dense, and it could be trimmed up to 5 feet or whatever. It needs to be trimmed, and that would give some screening from late April through November, so I would hope for that type of density in the leaf structure.

RUANE So the neighbors are thinking the pear trees or some substitute as well as the 3-foot tall shrubbery barrier?

ALEXANDER My observation probably just the pear trees would do just as good with the shrubs, but I wouldn't be against it.

ROGERS Mrs. Alexander, on your list of neighbors that were listed on the letter can you help me where Mr. and Mrs. Pittman live. I don't see Broadmoor Street on my drawing.

ALEXANDER We have a blind curve probably right here, and their property is adjacent to Cresthill Street as well as Broadmoor. They are in the notification area.

ROGERS Can I assume all of the people listed all live east of Armour Street?

ALEXANDER Correct.

RUANE The letter that we have received, is it signed and approved 100% from the adjacent properties owners?

ALEXANDER The people who have not signed it, I could not get a hold of them, they are out of town.

HOOVER We are willing to do what the neighbors are requesting.

RUANE Will you give me a better recommendation. The Bradford Pears are not going to even come close to meeting the interest of the neighbors, and it has to be something more dense. While it may not appear so, this curve line is a precarious stretch of road because there are two blind curves, and to have yet another driveway coming out onto Cresthill, I think this may be dangerous for drivers, but I don't want to solve that concern by making something that is unsafe for the children.

HOOVER You think it would be better to see the headlights?

RUANE No, I think it would be terrible for the headlights of cars parking to be shining out on the roadway. I think you have got to have the 3-foot tall shrubbery.

HOOVER We are in agreement, and the city is going to make us do that anyway.

ROGERS Trimming those trees at a level of about 5 feet, another thought on that is if I was exiting this parking lot and those trees were trimmed at 5 feet, and I was driving a suburban you sit higher than that in a tall vehicle and if those trees are too low I am concerned about that also.

HOOVER There will be a setback line, and we have to stay back from the site triangle, so we will have to stay away from the edges. We will have the same concern with the buses to.

FOSTER Have you had any experience if the 3 foot shrubbery would be adequate to discourage children from crossing that area?

HOOVER Probably not with what we normally put in there, but if put something in there with thorns or stickers that will keep them from it. We want solid screening.

RUANE What about 8 Bradford Pear trees? Can that provide visual screening for 140 square foot long area?

HOOVER I was concerned because that is going to be real thick but the neighbors don't care if they grow together like that. They are more interested in the screening than each tree.

FOSTER In the last variance, I thought you could get in two trees with that kind of space, but I think this Board could give general direction, that it be completely screened except for the visual triangles, concern for traffic, and that it include the 3-foot height, and that the trees be deciduous. There are trees that have more leaves than other and those that stay on longer during the year. An evergreen would be a little much screening.

RUANE The reason I am not concerned about that here is because of the curvature of the road. Any car passing by will have the ability to see behind this barrier whether you are coming from the east or west.

DICKGRAFE Is there parking allowed on Cresthill Road?

ALEXANDER Only on the north side, but it is regularly violated until there is a call to the local police.

DICKGRAFE At bus time, you are going to have buses, cars parked, probably on both sides of Cresthill road.

ALEXANDER The school tries to separate the parent drop-off versus the bus, and parent drop off is going to continue on Armour, and they are always suppose to do it, and does that happen, no.

MILLER If they are deciduous trees they are going to drop their leaves in the fall so most of the school year there would be no leaves on the trees, and then in the summer when nobody is there is when they will be leafed out.

RUANE MOVES MARKHAM SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT THE SECRETARY'S REPORT EXCEPT THAT ITEMS #3 BE AMENDED TO READ:

- 3. The parking lot shall be developed in general conformance with the landscape ordinance plus a solid row of conifer trees between the parking area and the street to the maximum extent possible given the site triangle with the overall goal being complete screening to the south by a combination of parking lot screening shrubs and conifer trees.**

MOTION carries 5-0. The Board adopts the following resolution:

BZA RESOLUTION NO. 2004-00002

WHEREAS, Unified School District 259 (Owner); Joe Hoover (Agent) pursuant to Section 2.12.590.B,

Code of the City of Wichita, requests a variance to Section IV-A.6.a of the Unified Zoning Code to permit parking within the front setback on property zoned “SF-5” Single-family Residential legally described as follows:

Lot 1, Block A, Harris Elementary Addition, Wichita, Sedgwick County, Kansas. Generally located at the southeast corner of 9th Street North and Armour (706 N. Armour).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of February 24, 2004, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the subject property is developed with an elementary school on a tract that is about one-half the size of a typical elementary school property; therefore, development of the property within all setback requirements is not possible while preserving sufficient open space for a playground.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the only residential uses adjacent to the parking lot are located across the street; therefore, the subject property will not create any of the negative impacts that occur when a parking lot immediately adjoins residential uses.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Code will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the parking lot to be developed in accordance with the zoning regulations will entail eliminating needed playground area on the school property.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as sufficient separation between the parking lot and the sidewalk will exist so that no detrimental impacts to public health, safety, or welfare should occur.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Code inasmuch as the intent of Section IV-A.6.a. of the Unified Zoning Code is to prevent parking lots from encroaching in front of the building wall line along a residential street and causing detrimental impacts on the neighborhood by interrupting the continuous landscaped street yard. The subject property is located across the street from all residences; therefore, it will not violate the intent of Section IV-A.6.a. of the Unified Zoning Code.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance be granted to Section IV-A.6.a of the Unified Zoning Code to permit parking within the front setback on property zoned “SF-5” Single-family Residential legally described as follows:

Lot 1, Block A, Harris Elementary Addition, Wichita, Sedgwick County, Kansas. Generally located at the southeast corner of 9th Street North and Armour (706 N. Armour).

The variance is hereby GRANTED, subject to the following conditions:

1. The parking lot shall be permitted to encroach into to the front setback along Cresthill but shall not be located closer than five (5) feet from the property line.
2. The parking lot shall be paved and marked in general conformance with the approved site plan.
3. The parking lot shall be developed in general conformance with the landscape ordinance plus a solid row of conifer trees between the parking area and the street to the maximum extent possible given the site triangle with the overall goal being complete screening to the south by a combination of parking lot screening shrubs and conifer trees.
4. The applicant shall obtain all necessary permits, and the improvements to the parking lot shall be completed within one year of the granting of the variance, unless such time period is extended by the Board.
5. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 24th DAY of FEBRUARY, 2004.

RUANE Item 4, Case No, BZA2001-51, Hearing to declare variance null and void for failure to comply with conditions of approval to allow a reduction of the side yard setback from 6 feet to 3 feet for a garage/workshop on property zoned “SF-5” Single-family Residential, Applicant, Donald R. Govan, generally located south of 20th Street North on the west side of Madison (2101 N. Madison).

KNEBEL, Planning staff Presents staff report and slides. Staff recommends declaring variance null and void, in the following staff report.

DATE: February 13, 2004
TO: Board of Zoning Appeals
FROM: Scott Knebel, Assistant Secretary
SUBJECT: BZA2001-00051 – Variance to allow a reduction of the side yard setback from 6 feet to 3 feet for a garage/workshop on property zoned “SF-5” Single-Family Residential. Generally located south of 20th Street North on the west side of Madison (2101 N. Madison).

At the October 21, 2003, meeting, the Board received a report from the Office of Central Inspection that the applicant has not complied with the conditions of approval for the above referenced variance. Namely, the applicant was given until October 29, 2003 to complete required improvements to the property. To date, the applicant has made no improvements to the property; therefore, on November 6, 2003, the MAPD sent the attached letter to the applicant advising him of his right to request a time

extension for completing the required improvements. The applicant contacted the MAPD by phone indicating that the time extension would be requested, but no application for a time extension has been submitted. The item has been placed on the Board's agenda so that the Board may declare the variance null and void for failure to meet the conditions of approval if that is the will of the Board.

SKELTON You are going to go out there and declare this variance null and void you right a citation and you take him to court, that is going to be the action?

KNEBEL It could be the city's action.

SKELTON I think this applicant has blown us off and I am not in favor of extended the time again.

FOSTER What should this applicant be doing?

KNEBEL The requirement of the Board of Zoning Appeals was that the variance was granted to allow a 3-foot encroachment into the side yard setback, and this structure is built to the property line, so this structure would need to be removed or remodeled.

FOSTER So he was to move back 3 feet back from what we see.

KNEBEL Or take this structure down and reconstruct something different that complied with the Code.

SKELTON moves ROGERS seconds, to declare variance null and void for failure to comply with conditions of approval.

Motion carries 5-0.

HERB SHANER, OCI, Item 5, BZA2003-05, Variance to Section 24.04.200(g) of the Sign code to permit an off-site sign to be located within 605 feet of public park generally located north of Harry and east of Kansas Turnpike (1-35). They are in compliance, and that sign has been installed.

Meeting adjourned 3:15 p.m.